

An ordinance implementing IC 36,
enacting Home Rule, Confirming
Pre-existing Powers of the City of
Fort Wayne, Indiana, and Ordinances
of said City and adopting Statutes
of the State of Indiana incident
thereto.

WHEREAS, the State of Indiana has enacted what is commonly
called Home Rule for cities in the State of Indiana; and,

WHEREAS, by IC 36-1-3-2 it is the policy of the State of
Indiana to grant to cities all powers they need for the effective
operation of their government as to local affairs; and,

WHEREAS, under IC 36-1-3-4 the new rule of law is that the
City has:

1. All powers granted it by statute; and,
2. All powers necessary or desirable in the
conduct of its affairs, even though not
granted by statute except those powers
which are specifically withheld under
IC 36-1-3-8; and,

WHEREAS, in order to more effectively operate under Home Rule
it is necessary that not only shall there be this Ordinance
enacted by the City of Fort Wayne, Indiana, with other ordinances
enacted from time to time in the future, and to that end and
purpose the provisions hereafter set forth be incorporated in an
ordinance adopted by the City of Fort Wayne, Indiana, prior to
September 1, 1982; and,

WHEREAS, the intent and purpose of this Ordinance shall
further be to implement Home Rule and the inclusion of Indiana
State Statutes (hereafter referred to in this Ordinance by IC
designations) even though said IC designations may include wider
scopes than absolutely necessary for particular ordinances,
nevertheless, broad enough in purpose to allow the City of Fort
Wayne, Indiana, to fully function under Home Rule.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF
THE CITY OF FORT WAYNE, INDIANA, AS FOLLOWS:

Section 1. It is hereby determined and declared by the
Common Council of the City of Fort Wayne, Indiana, that the pro-
visions of this Ordinance incorporate by reference all the provisions
of the Code of the City of Fort Wayne, Indiana of 1974, as amended
and that this Ordinance hereby reenacts all of the ordinances
contained in said Code pursuant to IC 36-1-3-6, except as said
Code may conflict with any mandatory provision of IC 36.

Section 2. Whereas, the City of Fort Wayne, Indiana, wants
to exercise certain powers it is hereby enacted that the following
statutory powers are retained by the City of Fort Wayne, Indiana
pursuant to 1980 P.L. 211 § 15(b) and 1981 H.E.A. 1004 § 2:

- A. IC 18-5-3
- B. IC 18-5-7
- C. IC 19-7-46-3
- D. IC 19-7-46-4
- E. IC 19-7-33
- F. IC 18-5-20
- G. IC 18-6-21
- H. IC 19-9-0.5
- I. IC 18-6-12
- J. IC 19-7-47-3
- K. IC 19-7-21

The manner for exercising these powers shall be as prescribed
in these statutes until such procedures shall be amended by
ordinance.

Section 3. It being the purpose of this Ordinance to retain
for the City of Fort Wayne, Indiana, all powers necessary or
desirable for the conduct of its affairs, it is hereby enacted
that all powers permitted under those statutes set forth in

1980 P.L. 211 § 15(a) and 1981 H.E.A. 1004 § 1, are hereby retained, whether or not those powers have heretofore been implemented or exercised; and pursuant to 1980 P.L. 211 § 15(b) and 1981 H.E.A. 1004 § 2, the manner for exercising those powers shall be as prescribed in those statutes described in 1980 P.L. 211 § 15(a) and 1981 H.E.A. 1004 § 1, until such procedures shall be amended by ordinance.

Section 4. Whereas, IC 36 does not fully regulate procedures for public purchases, and it is necessary for the City of Fort Wayne, Indiana, to supplement such procedure, therefore, it is hereby enacted that:

- A. Pursuant to IC 36-1-3-6 the procedures governing purchases and leases by municipal utilities of the City of Fort Wayne, Indiana shall conform with Section 11-1 of the Code of the City of Fort Wayne, Indiana, of 1974 as amended.
- B. Pursuant to IC 36-1-3-6 the procedures governing purchases and leases by the civil city of the City of Fort Wayne, Indiana shall conform with IC 36-1-9 and shall further be in compliance with the provisions contained in Section 11-1 of the Code of the City of Fort Wayne, Indiana, of 1974 as amended.

Section 5. All of the presently existing executive departments, boards, commissions and agencies of the City of Fort Wayne, Indiana are hereby continued.

Section 6. The City of Fort Wayne, Indiana, is desirous of more fully regulating itself by enacting ordinances from time to time and accordingly, the subject matter of this Ordinance shall in no way be intended as a limitation on the power of the City of Fort Wayne, Indiana, to continually enlarge and implement its

Home Rule powers.

Section 7. Two copies of this Ordinance, the Code of the City of Fort Wayne, Indiana of 1974 as amended, and all statutes referred to herein, are on file in the Office of the Clerk for the Common Council of the City of Fort Wayne for public inspection.

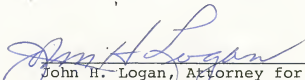
Section 8. If any section, clause, paragraph, portion or sentence of this Ordinance is declared illegal or void, it shall not affect the other sections, clauses, paragraphs, portions or sentences of this Ordinance which shall remain in full force and effect.

Section 9. This Ordinance shall be in full force and effect from and after its passage and approval by the Mayor.



COUNCILMAN

APPROVED AS TO FORM
AND LEGALITY:



John H. Logan, Attorney for
the Common Council of the
City of Fort Wayne, Indiana

1 BILL NO. G- 82-08-32 AS AMENDED

2 GENERAL ORDINANCE NO. G- AS AMENDED

3 An Ordinance implementing IC 36,
4 enacting Home Rule, Confirming
5 Pre-existing Powers of the City of
6 Fort Wayne, Indiana, and Ordinances
7 of said City and adopting Statutes
8 of the State of Indiana incident
9 thereto.

10 WHEREAS, the State of Indiana has enacted what is
11 commonly called Home Rule for cities in the State of Indiana;
12 and,

13 WHEREAS, by IC 36-1-3-2 it is the policy of the State
14 of Indiana to grant to cities all powers they need for
15 the effective operation of their government as to local
16 affairs; and,

17 WHEREAS, under IC 36-1-3-4 the new rule of law is that
18 the City has:

- 19 1. All powers granted it by statute; and,
- 20 2. All powers necessary or desirable in the
21 conduct of its affairs, even though not
22 granted by statute except those powers
23 which are specifically withheld under
24 IC 36-1-3-8; and,

25 WHEREAS, in order to more effectively operate under Home
26 Rule it is necessary that not only shall there be this
27 Ordinance enacted by the City of Fort Wayne, Indiana, with
28 other ordinances enacted from time to time in the future, and
29 to that end and purpose the provisions hereafter set forth
30 be incorporated in an ordinance adopted by the City of Fort
31 Wayne, Indiana, prior to September 1, 1982; and,

32 WHEREAS, the intent and purpose of this Ordinance shall
further be to implement Home Rule and the inclusion of
Indiana State Statutes (hereafter referred to in this Ordinance
by IC designations) even though said IC designations may
include wider scopes than absolutely necessary for particular
ordinances, nevertheless, broad enough in purpose to allow
the City of Fort Wayne, Indiana, to fully function under Home
Rule.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF
THE CITY OF FORT WAYNE, INDIANA, AS FOLLOWS:

Section 1. It is hereby determined and declared by
the Common Council of the City of Fort Wayne, Indiana, that
the provisions of this Ordinance incorporate by reference all
the provisions of the Code of the City of Fort Wayne, Indiana,
of 1974, as amended and that this Ordinance hereby reenacts
all of the ordinances contained in said Code pursuant to
IC 36-1-3-6, except as said Code may conflict with the
statutory provisions enumerated in Section 2 of this Ordinance.

Section 2. The powers and procedures under the following
statutory provisions are hereby adopted by this Ordinance for
the Government of the City of Fort Wayne, Indiana:

IC 36-1-8-1 through IC 36-1-8-7	Dealing with Miscellaneous Administrative Provisions;
IC 36-4-4-1 through IC 36-4-4-5	Dealing with the Division of Powers of Cities;
IC 36-4-5-1 through IC 36-4-5-7	Dealing with City Executive;
IC 36-4-6-1 through IC 36-4-6-24	Dealing with City Legislative Body;
IC 36-4-7-1 through IC 36-4-7-11	Dealing with City Budgets;
IC 36-4-8-1 through IC 36-4-8-13	Dealing with City Administration;
IC 36-4-9-1 through IC 36-4-9-12	Dealing with Departments, Boards and Appointed Officers;
IC 36-4-10-1 through IC 36-4-10-6	Dealing with City Clerk and Fiscal Officer;
IC 36-4-11-1 through IC 36-4-11-5	Dealing with City Deputies and Employees;

Section 3. The following statutory enactments of the
State of Indiana have been repealed and as indicated in each
instance either no authority has been transferred to new
Home Rule statutes (IC 36) or limitations are enacted in said
IC 36. Whereas, the City of Fort Wayne, Indiana, wants to
exercise such powers which would otherwise be repealed, it
is hereby enacted that the following statutory powers are
retained by the City of Fort Wayne, Indiana:

A. IC 18-5-4 dealing with franchising the use of
areas above and below public rights of way.

(1980 Acts, Pub. L. 211, § 15 (b)).

- 1 B. IC 18-5-7 dealing with civic, educational or
2 government associations for betterment and improvement
3 for municipal or school operations. (1980 Acts,
4 Pub. L. 211, § 15 (b)).
- 5 C. IC 19-7-46-3 and 4 dealing with authority to make
6 annual payment for art associations and procedures
7 said associations must follow. IC 36-10-2-4
8 provides that the City may aid historical facilities
9 and programs. (1981 H.E.A. 1004, § 2).
- 10 D. IC 19-7-33 dealing with extended authority to regulate
11 bathhouses and swimming pools. (1981 H.E.A. 1004, § 2).
- 12 E. IC 18-5-20 dealing with power of the Board of Public
13 Works to regulate construction of underground and
14 overhead structures. (1981 H.E.A. 1004, § 2).
- 15 F. IC 18-6-21 dealing with the procedure for appropriation
16 and payment of a reward for the apprehension of
17 criminals. (1981 H.E.A. 1004, § 2).
- 18 G. IC 19-9-0.5 dealing with authority to appropriate
19 funds for Not-For-Profit Corporations created or
20 operated for purpose of coordinating and supplementing
21 public or private agencies devoted exclusively to the
22 welfare of youth. (1981 P. L. 211, § 15 (b)).
- 23 H. IC 18-6-12 dealing with authority to appropriate funds
24 for promotion by city officials in the best interest
25 of the city. (1981 P. L. 211
26 § 15 (b)).
- 27 I. I.C. 19-7-47-3, dealing with the aid to museums,
28 libraries, historical and scientific facilities and
29 programs; and,
- 30 J. IC 19-7-21, with respect to the matter of acquisition
31 and operation of stadiums and similar facilities.

32 The above noted statutes herein referred to in this
Section 3 are hereby reenacted in their entirety and in that

1 regard, the City shall have all powers with respect to the
2 subject matter of each such statute as if such statute had not
3 been repealed. The procedure for exercising the powers
4 herein referred to in this Section 3 shall be as provided for
5 in such repealed statutes with such procedures shall be
6 amended by ordinance.

7 Section 4. It is also the purpose of this Home Rule
8 Ordinance to give the City of Fort Wayne, Indiana, all powers
9 necessary or desirable in the conduct of its affairs except
10 those powers which are specifically withheld from cities
11 under federal and state statutes and federal and state
12 constitutions.

13 Section 5. Whereas, IC 36 does not fully regulate
14 procedures for public purchases, and it is necessary for
15 the City of Fort Wayne, Indiana, to supplement such
16 procedure, therefore, it is hereby enacted that:

- 17 (A) Pursuant to IC 36-1-3-6 the procedures governing
18 purchases and leases by municipal utilities of the
19 City of Fort Wayne, Indiana shall conform with
20 IC 36-1-9 except that prior approval by the Common
21 Council of the City of Fort Wayne, Indiana pursuant
22 to Section 11-1 of the Code of the City of Fort Wayne,
23 Indiana, of 1974 as amended shall be required in
24 all purchases in excess of \$7,500.00 and in all
25 leases in excess of \$5,000.00;
- 26 (B) Pursuant to IC 36-1-3-6 the procedures governing
27 purchases and leases by the civil city of the City
28 of Fort Wayne, Indiana shall conform with IC 36-1-9
29 except that prior approval by the Common Council
30 of the City of Fort Wayne, Indiana pursuant to Section
31 11-1 of the Code of the City of Fort Wayne, Indiana,
32 of 1974 as amended be required in all purchases in
excess of \$7,500.00 and all leases in excess of
\$5,000.00;

1 (C) Wherever there exists a conflict between the
2 provisions of IC 36-1-9 and Section 11-1 of
3 the Code of the City of Fort Wayne, Indiana, of
4 1974 as amended, the provisions of said Code
5 of the City of Fort Wayne, Indiana of 1974
6 as amended shall govern the City of Fort
7 Wayne, Indiana, and its municipally owned
8 utilities.

9 Section 6. All of the presently existing executive
10 departments, boards, commissions and agencies of the City
11 of Fort Wayne, Indiana are hereby reestablished, subject to
12 subsequent change by further ordinance. In that regard
13 future ordinances will be submitted to the Common Council,
14 upon recommendation of the Mayor, with respect to the executive
15 structure of City departments, boards, commission and agencies

16 Section 7. The City of Fort Wayne, Indiana, is desirous
17 of more fully regulating itself by enacting ordinances from
18 time to time and accordingly, the subject matter of this
19 Ordinance shall in no way be intended as a limitation on the
20 power of the City of Fort Wayne, Indiana, to continually
21 enlarge and implement its Home Rule powers and to that end the
22 City of Fort Wayne, Indiana, does hereby include any and
23 all power as municipality in existence previous to the enactment
24 of IC 36 and not specifically repealed hereby provided,
25 however that all such power or powers shall be exercised
26 as provided by the Code of the City of Fort Wayne, Indiana,
27 of 1974, as amended, and if no such procedure is outlined
28 therein, then as provided by state statute.

29 Section 8. Two copies of this Ordinance are on file in
30 the Office of the Clerk for the legislative body (Common
31 Council for the City of Fort Wayne) for public inspection.

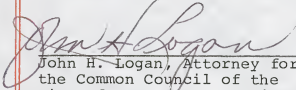
32 Section 9. If any section, clause, paragraph, portion or
sentence of this Ordinance is declared illegal or void, it
shall not affect the other sections, clauses, paragraphs,
portions or sentences of this Ordinance which shall remain in

1 full force and effect.

2 Section 10. This Ordinance shall be in full force and
3 effect from and after its passage and approval by the Mayor.

4
5 
6 COUNCILMAN

7 APPROVED AS TO FORM
8 AND LEGALITY:

9 
10 John H. Logan, Attorney for
11 the Common Council of the
City of Fort Wayne, Indiana.

1 BILL NO. G-82-08-32

2 GENERAL ORDINANCE NO. G-_____

3 AN ORDINANCE implementing I.C. 36, enacting
4 Home Rule, confirming pre-existing powers
5 of the City of Fort Wayne, Indiana, and
6 ordinances of said City, and adopting all
7 necessary statutes of the State of Indiana
8 incidental thereto.

9 WHEREAS, the State of Indiana has enacted what is com-
10 monly called Home Rule for cities in the State of Indiana; and

11 WHEREAS, by I.C. 36-1-3-2 it is the policy of the State
12 of Indiana to grant to cities all of the powers they need for the
13 effective operation of their government as to local affairs; and

14 WHEREAS, under I.C. 36-1-3-4 the new rule of law is that
15 the City has:

- 16 1. all powers granted it by statute; and
- 17 2. all powers necessary or desirable in the conduct
18 of its affairs, even though not granted by statute
19 except those powers which are specifically withheld
20 under I.C. 36-1-3-8; and

21 WHEREAS, in order to more effectively operate under Home
22 Rule, it is necessary that not only shall there be this Ordinance
23 enacted by the City of Fort Wayne, Indiana but additional ordinan-
24 ces from time to time to further implement and refine the provi-
25 sions of Home Rule as same relate to the operations of City
26 government; and

27 WHEREAS, it is the further intent and purpose of this
28 Ordinance to include Indiana State statutes as powers of the City
29 of Fort Wayne, Indiana.

30 NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF
31 THE CITY OF FORT WAYNE, INDIANA:

32 SECTION 1. Upon the recommendation of the Mayor of the
City of Fort Wayne, Indiana, it is hereby determined and declared
by the Common Council of the City of Fort Wayne, Indiana, that

1 Page Two

2
3 except as otherwise provided for in this Ordinance, the provisions
4 of this Ordinance do hereby incorporate by reference all of the
5 provisions of the Municipal Code of the City of Fort Wayne,
6 Indiana of 1974, as amended, and that this Ordinance is a restate-
7 ment and reenactment of all of the ordinances contained in said
8 Code. In that regard, and in addition thereto, all of the pre-
9 sently existing executive departments, boards, commissions and
10 agencies of the City of Fort Wayne, Indiana are hereby
11 reestablished, subject to subsequent change by further ordinance.
12 In that regard it is contemplated that future ordinances will be
13 submitted to Council, upon recommendation of the Mayor, with
14 respect to the executive structure of City departments, boards,
15 commissions and agencies.

16 SECTION 2. That all statutory provisions of the Indiana
17 Code are hereby adopted by this Ordinance for the government of
18 the City of Fort Wayne, Indiana and the City shall be deemed to
19 have all such powers as enumerated in Title 36 of the Indiana Code
20 or elsewhere. If a procedure for exercising such power is pro-
21 vided in the Municipal Code of the City of Fort Wayne, Indiana of
22 1974, as amended, then such procedure shall be utilized and if no
23 such procedure is referenced in the Municipal Code of the City of
24 Fort Wayne, Indiana of 1974, as amended, then the proper procedure
25 shall be that procedure as outlined in the appropriate provision
26 of the Indiana Code, even though such procedure is discretionary
27 as provided by law. In those instances in which there is a man-
28 datory procedure for utilizing a power, as provided by State law,
29 then such mandatory procedure shall be utilized.

30 SECTION 3. It is noted that the following statutory
31 enactments of the State of Indiana have been repealed and as indi-
32 cated in each instance, either no statutory authority has been

1 Page Three

2
3 transferred to new Home Rule statutes (I.C. 36) or limitations are
4 enacted in said Home Rule statutes:

- 5 A. I.C. 18-5-4, dealing with franchising the use of
6 areas above and below public rights-of-way;
- 7 B. I.C. 18-5-7, dealing with civic, educational or
8 governmental associations for a betterment and
9 improvement for municipal or school operations;
- 10 C. I.C. 19-7-46-3 and I.C. 19-7-46-4, dealing with
11 authority to make annual payment for art asso-
12 ciations and procedures said associations must
13 follow;
- 14 D. I.C. 19-7-33, dealing with extended authority to
15 regulate bath houses and swimming pools;
- 16 E. I.C. 18-5-20, dealing with the power of the Board of
17 Public Works to regulate construction of underground
18 and overhead structures;
- 19 F. I.C. 18-6-21-1, dealing with the procedure for
20 appropriation and payment of a reward for the appre-
21 hension of criminals;
- 22 G. I.C. 19-9-0.5, dealing with the authority to
23 appropriate funds for not-for-profit corporations
24 created or operated for purposes of coordinating and
25 supplementing public or private agencies devoted
26 exclusively to the welfare of youth;
- 27 H. I.C. 18-6-12, dealing with authority to appropriate
28 funds for promotion by City officials in the best
29 interests of the City;
- 30 I. I.C. 19-7-47-3, dealing with the aid to museums,
31 libraries, historical and scientific facilities and
32 programs; and

1 Page Four

2
3 J. I.C. 19-7-21, with respect to the matter of acqui-
4 sition and operation of stadiums and similar
5 facilities.

6 The above noted statutes herein referred to in this
7 Section Three are hereby reenacted in their entirety and in that
8 regard, the City has all necessary powers with respect to the sub-
9 ject matter of each such statute as if such statute had not been
10 repealed. The procedure for exercising the powers herein referred
11 to in this Section Three shall be as provided for in such repealed
12 statutes. Furthermore, it is anticipated that the statutes herein
13 referred to and the powers specifically referenced in same shall
14 be the subject matter of a future ordinance or ordinances.

15 SECTION 4. It is the purpose of this Home Rule
16 Ordinance to give the City of Fort Wayne, Indiana all powers
17 necessary or desirable in the conduct of its affairs, except those
18 powers which are specifically withheld from cities under State
19 statute and Federal and State Constitutions and in that regard,
20 all such powers are hereby adopted and reaffirmed in this
21 Ordinance.

22 SECTION 5. Notwithstanding anything herein to the
23 contrary, it is the purpose of the City of Fort Wayne, Indiana, to
24 specifically incorporate into its Home Rule authority, the provi-
25 sions of Section 11-1 of the Municipal Code of the City of Fort
26 Wayne, Indiana of 1974, as amended, dealing with the limits of
27 purchases and/or leases requiring approval or ratification by the
28 Common Council of the City of Fort Wayne, Indiana. In that
29 regard, it is noted that even though the State statute shall apply
30 with respect to public purchases and leases, all such purchases
31 exceeding Seven Thousand Five Hundred and No/100 Dollars
32 (\$7,500.00) and leases exceeding Five Thousand and No/100 Dollars

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(\\$5,000.00) (for both the Civil City and Utilities) shall require Council approval or ratification.

SECTION 6. The City of Fort Wayne, Indiana is desirous of more fully regulating itself by enacting ordinances from time to time and accordingly, the subject matter of this Ordinance shall in no way be intended as a limitation on the power of the City of Fort Wayne, Indiana, to continually enlarge and implement its Home Rule powers and to that end the City of Fort Wayne, Indiana does hereby include any and all power as a municipality in existence previous to the enactment of I.C. 36 and not specifically repealed hereby provided, however that all such power or powers shall be exercised as provided by the Municipal Code of the City of Fort Wayne, Indiana of 1974, as amended and if no such procedure is outlined therein, then as provided by State statute.


SECTION 7. Two copies of this Ordinance are on file in the Office of the Clerk for the legislative body (Common Council for the City of Fort Wayne) for public inspection.

SECTION 8. If any section, clause, paragraph, portion or sentence of this Ordinance is declared illegal or void, it shall not effect the other sections, clauses, paragraphs, portions or sentences of this Ordinance which shall remain in full force and effect.


SECTION 9. This Ordinance shall be in full force and effect from and after its passage and approval by the Mayor.

Councilmember

APPROVED AS TO FORM
AND LEGALITY:



Bruce O. Boxberger
City Attorney for the
City of Fort Wayne, Indiana



John H. Logan, Attorney for
the Common Council of the
City of Fort Wayne, Indiana

Read the first time in full and on motion by Eustach, seconded by Stier, and duly adopted, read the second time by title and referred to the Committee Home Rule (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on , the day of , 19 , at o'clock M., E.S.T.

DATE: F-24-82

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Read the third time in full and on motion by Eustach, seconded by Stier, and duly adopted, placed on its passage. PASSED (Lost) by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT:</u>
<u>TOTAL VOTES</u>	<u>9</u>	<u>0</u>	<u> </u>	<u> </u>	<u> </u>
<u>BRADBURY</u>	<u>X</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u>BURNS</u>	<u>X</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u>EISBART</u>	<u>X</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u>GIAQUINTA</u>	<u>X</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u>SCRUGGS</u>	<u>X</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u>NICHOLS</u>	<u>X</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u>SCHMIDT</u>	<u>X</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u>SCHOMBURG</u>	<u>X</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u>STIER</u>	<u>X</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u>TALARICO</u>	<u>X</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>

DATE: F-26-82

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ZONING MAP) (GENERAL) (ANNEXATION) (SPECIAL) no amendment
(APPROPRIATION) ORDINANCE (RESOLUTION) NO. M-23-82 no amendment
on the 26th day of August, 1982.

ATTEST:

(SEAL)

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Samuel J. Talarico
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 27th day of August, 1982, at the hour of 9:30 o'clock A. M., E.S.T.

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Approved and signed by me this 31st day of August, 1982, at the hour of 4 o'clock P M., E.S.T.

Win Moses, Jr.
WIN MOSES, JR. - MAYOR



The City of Fort Wayne

August 26, 1982

Communication to the Common Council
of the City of Fort Wayne

Re: Home Rule Ordinance
Bill No. G-82-08-32

Dear Members of the Common Council:

Regrettably, I will be out of town this evening and therefore, unable to attend the Council meeting with respect to the above. In my absence Mr. Frank Heyman will be the administration's spokesman. If legal questions do arise, I will be back in town on Monday, August 30, and will be able to meet with any of you at your convenience. Although my name does not appear on the redrafted Ordinance, I do approve same as to form and legality, as it presently is written.

Mr. John Logan and I feel that the Ordinance as written is a good starting point and is statutorily sufficient.

The law gives us ample opportunity to refine our powers and procedures after September 1, 1982. There is no need for us to do anything additional prior to September 1. The reason for this is that most of our powers, boards, commissions, departments, etc. are referenced in our Municipal Code therefore, by reenacting the Code you reenact these matters.

I look forward to working with Mr. Logan in the very near future to refine what powers we already have. Actually, Fort Wayne is in much better shape than most other cities of the second class in the State. Cities such as Evansville, which did not have an organized Municipal Code, nor a departmental structure, had to undertake painstaking efforts to establish powers, procedures and codifications that we already have.

Respectfully submitted,

Bruce O. Boxberger
City Attorney (Corporation Counsel)
City of Fort Wayne, Indiana

sj

cc: Mr. John H. Logan, Esq.
The Honorable Charles W. Westerman
Mr. Frank W. Heyman

- A. IC 18-5-4 dealing with franchising the use of areas above and below public rights of way.
(1980 Acts, Pub. L. 211, § 15 (b)).
- B. IC 18-5-7 dealing with civic, educational or government associations for betterment and improvement for municipal or school operations. (1930 Acts, Pub. L. 211, § 15 (b)).
- C. IC 19-7-46-3 and 4 dealing with authority to make annual payment for art associations and procedures said associations must follow. IC 36-10-2-4 provides that the City may aid historical facilities and programs. (1981 H.E.A. 1004, § 2).
- D. IC 19-7-33 dealing with extended authority to regulate bathhouses and swimming pools. (1981 H.E.A. 1004, § 2).
- E. IC 18-5-20 dealing with power of the Board of Public Works to regulate construction of underground and overhead structures. (1981 H.E.A. 1004, § 2).
- F. IC 18-6-21 dealing with the procedure for appropriation and payment of a reward for the apprehension of criminals (1981 H.E.A. 1004, § 2).
- G. IC 19-9-0.5 dealing with authority to appropriate funds for Not-For-Profit Corporations created or operated for purpose of coordinating and supplementing public or private agencies devoted exclusively to the welfare of youth. (1981 P. L. 211, § 15 (b)).
- H. IC 18-6-12 dealing with authority to appropriate funds for promotion by city officials in the best interest of the city. (1981 P. L. 211 § 15 (b)).
- I. IC 19-7-47-3, dealing with the aid to museums, libraries, historical and scientific facilities and programs; and,
- J. IC 19-7-21, with respect to the matter of acquisition and operation of stadiums and similar facilities.

Memorandum

To All Members of the Common Council

Date March 23, 1982

From John H. Logan, Attorney for the Common Council

Subject Report of Common Council

COPIES TO:

All Members of
the Common
Council

You have requested a report on what needs to be done with respect to the functions of the Common Council in implementing the Home Rule Amendments.

Brief Historical Background. As a result of Home Rule Amendments the functions of City government have undergone massive changes. At the present time and until September 1, 1982, the City has only those functions of government which are specifically given to it by the State Legislature. On and after September 1, 1982, the City can only exercise powers enacted by its ordinances, as to those portions of the law governing cities and towns repealed by the Home Rule Amendments. Certain aspects of Home Rule come into existence not on September 1, 1982, but on September 1, 1983.

Limits of this report are insufficient to go into all the details, but it should be pointed out that unless the Common Council of the City of Fort Wayne, enacts certain ordinances by September 1, 1982, there will be "gaps" in the functions of City government subject to exceptions hereafter set forth. After September 1, 1982, the City of Fort Wayne is permitted to exercise all powers that it needs for the effective operation of its government.

IC 36-1-3-3 states in part "any doubt as to the existence of a power shall be resolved in favor of the existence". But in order to effect proper functions we need to act between now and September 1, 1982 and after that date by ordinance.

Necessity for Legal Research. Three rules are necessary for the researcher to consider:

1. The ordinance or ordinances passed by the Common Council effective after the advent of Home Rule on September 1, 1982, may provide merely a copy of the state statute that now exists governing such functions or the ordinances may establish new procedure for the exercise of the power.
2. In establishing new procedure, careful consideration must be given to whether or not the power sought to be exercised by the

Memorandum

To All Members of the Common Council Date March 23, 1982

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City is denied by the Constitution of the State of Indiana or whether it is still reserved to the State of Indiana after September 1, 1982, by statutory law.

3. The question as to whether the State has legislation on a particular subject which is still in force and which would inhibit the City from legislating thereon.

I want to point out, however, that before the September 1, 1982, deadline is reached the City may continue to exercise the power granted to it by statute, but after the deadline is past then the statutory authorization for the exercise of the power no longer exists and the power may then be exercised by our ordinances. Furthermore, failure to act by ordinance before the deadline does not prohibit by enacting ordinance governing Home Rule functions after September 1, 1982. Also, an ordinance adopted under the Home Rule provisions can be amended at anytime in the future as long as it does not violate the constitution of Indiana or a State Law governing the same subject matter.

Some Other Aspects of Home Rule. The Common Council has until September 1, 1983, to enact a Police Merit System aspects of government. The utilities ordinance should be enacted effective after September 1, 1982. Likewise, some things affecting transportation systems in our City, underground and overhead structure regulation, streets and alleys, payment of awards for apprehension for criminals are but a few of the things we will address ourselves to in the way of legislation.

Functions of Common Council Attorney and City Attorney. There can be a conflict of interest sometimes between the City Attorney's Office and the Common Council's Office, because the council's attorney advises concerning the legislative functions of the City, whereas the City Attorney's Office advises as to the conduct of the Executive or Administrative Branch of the City Government. Keeping these matters in mind, it is of the utmost importance that a spirit of cooperation exists between the two in order that the City progress

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with its government. Also Home Rule provides that certain aspects of City legislative government must be initiated by the Mayor. Therefore, keeping in mind the above, each of the two departments should be working along together.

Assistants to Legal Counsel for the Common Council.
IC 34-4-6-24 deals with the employment of legal counsel for the Common Council. It provides that you may employ an attorney and legal research assistants. There is a prohibition that the appropriation of attorney and legal research assistants may not exceed the appropriate or similar salaries in the budget for the City Department of Law.

Since there will be some considerable work required, I believe that the enactment and codification of necessary ordinances can be accomplished in one of two manners.

1. Use of a law clerk who can devote much more time under my supervision to putting in form subject to my approval prior to enactment of your matters required.
2. Use on a part-time of another lawyer.

Conclusion

I would recommend the former because I believe that it would be easier to funnel the work to you.

Respectfully submitted,


John H. Logan

JHL/thm

Memorandum

To Councilwoman Vivian G. Schmidt Date July 20, 1981
From John H. Logan, Attorney for the Common Council of the
City of Fort Wayne
Subject Bill No. G-81-03-16 (As Amended)

COPIES TO:

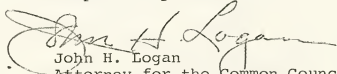
At the last regular meeting of the Common Council questions were raised pertaining to possible conflicting state statutes. Particular reference was made to fines, penalties and permit fees prescribed by Indiana State Law.

These questions were raised in the intermission between the committee session and the regular session during the evening of said last regular meeting and during a period of time when the Finance Committee was engaged in a public hearing in the other room (regular Common Council Chamber). Time did not permit more than a cursory examination of the letter addressed to Common Council and the law pertaining to any of the questions therein raised. There were several other questions raised in the hereafter mentioned letter, but the above seemed to be the only matters pertinent to the issue at hand.

The above questions deserved more than a quick, snap judgment on my part. The letter in question was from Warren W. Wyneken, an excellent lawyer and a respected member of the Allen County Bar Association. In order that the ordinance when passed by Council would be as free from questions as possible, the writer hereof suggested and Council voted to defer consideration of passage until these questions were resolved.

Accordingly, I have carefully examined the State Law and the above bill and have concluded that with certain additions to said bill same should be unquestionably sound, especially since "Home Rule" begins September 1, 1981. These suggested changes have been set forth on pages 12 and 15 of the bill which the Clerk has sent to all members of the Common Council. As you see, fines, permit fees and penalties are supplemental, or in addition to State Law requirements.

Respectfully submitted,



John H. Logan
Attorney for the Common Council
of the City of Fort Wayne.

JHL/thm

REPORT TO THE COMMON COUNCIL
OF
THE CITY OF FORT WAYNE
REGARDING
LOCAL GOVERNMENT LAW UNDER TITLE 36 OF THE INDIANA CODE

Submitted by:

John H. Logan,
Common Council Attorney

and

James S. Butts,
Attorney at Law

I

Background of Home Rule Powers Under Title 36 of the Indiana Code

Prior to 1981, local government units were considered creatures of the State and could do only what was expressly granted them by state statute. The statutes which extended power to local government units were frequently conflicting and confusing, and there often arose an inability to clearly determine the law of local government with reference to specific topics.

In the past it was necessary for a local government unit to go to the General Assembly of Indiana with a request for special authorization if the government unit wanted to do anything not authorized by statute.

As local government became more complex and the systems of management of the government unit became more refined it became increasingly apparent that it was necessary and advisable for the State to allow the local government unit a greater degree of flexibility and the ability to regulate itself within certain limits.

In 1978 the Indiana General Assembly, in recognition of the need for organized and understandable local government laws which would provide local government units with the power to supplement the state statutes with locally enacted ordinances,

created the Local Government Study Commission to provide recommendations for change of local government law.

The Local Government Study Commission, after extensive research, drafted in bill form their suggestions and recommendations. This product was submitted to the legislature, which was later enacted by the 1980, 1981, and 1982 General Assemblies.

At the conclusion of the 1982 session, the local government statutes had all been revised or recodified and located to a new Title 36 of the Indiana Code.

Under the new Home Rule Legislation, the legislature has granted to the local government unit the power to regulate itself by enacting ordinances which, within definite limits, may cover anything not specifically prohibited or prescribed to local governments by law or state regulation.

II

Home Rule Powers and Limitations

The Home Rule policy of the State of Indiana is to grant to units through Home Rule all powers they need for the effective operation of government as to local affairs. The prior rule of law that a unit has only:

- (1) powers expressly granted by statute;
- (2) powers necessarily or fairly implied in or incident to powers expressly granted; and

- (3) powers indispensable to the declared purposes of the unit;

was expressly abrogated under I.C. 36-1-3-4. The new rule of law is that a unit has:

- (1) all powers granted it by statute; and
- (2) all powers necessary or desirable in the conduct of its affairs, even though not granted by statute.

The power granted above is not without limitations. The following powers were specifically withheld under I.C. 36-1-3-8:

- (1) the power to condition or limit its civil liability, except as expressly granted by statute.
- (2) the power to prescribe the law governing civil actions between private persons.
- (3) the power to impose duties on another political subdivision, except as expressly granted by statute.
- (4) the power to impose a tax, except as expressly granted by statute.
- (5) the power to impose a license or other fee greater than that reasonably related to the administrative cost of exercising a regulatory power.
- (6) the power to impose a service charge greater than that reasonably related to the cost of the service provided.
- (7) the power to regulate conduct that is regulated by a state

agency, except as expressly granted by statute.

- (8) the power to prescribe a penalty for conduct constituting a crime or infraction under statute.
- (9) the power to prescribe a penalty of imprisonment for an ordinance violation.
- (10) the power to prescribe a penalty of a fine or more than two thousand five hundred dollars (\$2,500.00) for an ordinance violation.
- (11) the power to invest money, except as expressly granted by statute.

The Home Rule Law contains additional provisions that preclude, limit or condition the exercise of powers under Home Rule. A unit may exercise any power that it has to the extent that the power is not denied by Indiana Constitution or by statute and is not expressly granted to another entity.

The Home Rule Law provides further for the specific manner for exercising its powers. If there is a constitutional or statutory provision for exercising a power, a unit wanting to exercise the power must do so in the manner specified in the statute or Constitution.

Where there is no statutory or constitutional provision requiring a specific manner for exercising the power, a unit may exercise its powers in one of the following manners:

- (1) the legislative body (e.g., Common Council) of the municipality must adopt an ordinance prescribing a specific manner for exercising the power; or
- (2) comply with a statutory provision permitting a specific manner for exercising the power.

When considering whether to exercise any power by enactment of an ordinance the following procedure should be followed to determine the power exists and whether the power has been pre-empted. The following must be determined:

- (1) does the Constitution or state statutes prohibit the exercise of the power;
- (2) whether the power sought to be exercised has been specifically granted by statute;
- (3) whether the power sought to be exercised is necessary or desirable in the conduct of the affairs of the city;
- (4) is there a statute which requires a power or function to be exercised in a specific way;
- (5) whether there is a statute that permits the exercise of the power in a specific manner. If so, the legislative body may:
 - a. follow the provisions of the permissive statute; or
 - b. adopt certain provisions of the statute, including provisions in an ordinance tailored to meet the

- specific needs of the city; or
- c. write and adopt an ordinance which is totally tailored to local needs.

III

Procedure for Exercise of Home Rule Powers

Under Title 36 the Indiana General Assembly has conferred upon local units Home Rule powers. No further action is necessary on the part of the Common Council as Home Rule represents the policy of the State of Indiana and the power has been conveyed to the City of Fort Wayne.

If the City of Fort Wayne desires to exercise their legislative powers under Home Rule as to specific powers, it is only then that the formal ordinance procedure must be used.

IV

Existing Ordinances

The provisions as stated in I.C. 36-1-5 regarding codification of ordinances does not specifically address the procedure to be followed regarding existing ordinances which were codified prior to enactment of I.C. 36.

The Local Government Study Commission, in their final report, stated that it was the intent of the General Assembly to require local government units to update, clarify, and

reorganize their existing laws. For this reason I.C. 36-1-5-3 requires each local unit to compile all ordinances into a simplified code. The Home Rule Law does not specifically address the formalities for adopting a pre-existing code under I.C. 36.

A restated or re-enacted ordinance may be required under I.C. 36-1-5-5 for each original ordinance or amendment thereof. If an ordinance is adopted pursuant to this section, the legal conditions of an original ordinance need not be met.

It would clearly be a substantial burden for the City to re-enact or restate each ordinance under I.C. 36-1-5-5. It would therefore appear to be permissible under I.C. 36-1-5-4 to incorporate into an ordinance the existing ordinances which are not inconsistent with state statutes or the Constitution. If the code is adopted by reference, the ordinance must state that: two (2) copies of the material incorporated are on file in the Office of the Clerk for the City of Fort Wayne for public inspection.

V

Drafting and Introduction
of Ordinances Under Home Rule

Formerly ordinances were precisely prescribed and fixed

for local units by statute. Under the Home Rule Statute any local ordinance will normally not have a specific statutory basis or it will establish a procedure under a statute. In either event, the ordinance will have to be carefully drafted, specific, comprehensive, and procedurally correct.

Any person may draft a proposed ordinance for consideration by a legislative body; there are no statutory prohibitions or requirements for introduction of ordinances other than an ordinance for appropriations or a comprehensive plan in zoning ordinances. As no procedure is set forth, it is advisable to develop a procedure for review of ordinances prior to introduction and a procedure for actual introduction of the ordinance to the Common Council. The development of a specific procedure to be followed will assist the Council in insuring that ordinances introduced are in proper legal form and are in a form which will correspond to cataloging of the ordinance in the City Code.

Although the procedure could be structured in many ways, it would be advisable, at a minimum, to have the City Attorney review the proposed ordinance to insure proper legal form and have a committee review the ordinance and place it in a form which will correspond to proper cataloging under the City Code. Additionally, there should be a set procedure for introduction

of the ordinance in order that a proposed ordinance is not placed on the agenda and introduced for consideration in the same manner as other business.

VI

Procedure for Adoption of Ordinances

The procedure for adoption of ordinances is set forth in I.C. 36-4-6-10 through I.C. 36-3-6-17. In order to act upon an ordinance and conduct other business, a majority of all elected members of Common Council must be present and a majority constitutes a quorum. In order for an ordinance to be passed on the same day or at the same meeting at which it is introduced, a two-thirds (2/3) vote of all elected members, with consent of all members present, is required to pass the ordinance. Except where a statute specifically requires a greater vote, an ordinance may be passed, as introduced or amended, upon the majority vote of all elected members.

An ordinance may be amended after introduction; however, the procedure to be followed is not specified by statute and therefore it will be necessary for the Common Council to establish procedures for adding to, deleting, or altering any part or section of a proposed ordinance.

In order for an ordinance, order, or resolution to be passed, it must be signed by the presiding officer and approved

by the Mayor or passed over his veto. A mayoral veto may be overridden in the next regular or special meeting of the Council by two-thirds (2/3) vote of all members of the Council.

There is no requirement that ordinances be published, either before consideration or after adoption, except an ordinance prescribing a penalty or forfeiture for violation. The requirement for publication does not apply if an emergency is declared and the emergency is included in the ordinance itself. Certain exceptions exist to the non-publication requirement, including ordinances for annexation and ordinances involving planning and zoning which may require a public hearing. In those cases the necessity for a public hearing or required publication should be researched individually prior to introduction of the ordinances.

Amendments or repeals of ordinances are made by adopting another ordinance specifying the desired change in the prior ordinance.

VII

Organization and Procedure of Common Council

The meeting requirements of the Common Council remain unchanged from those established under the former law. I.C. 36-4-6-7 does further clarify that special meetings may only be called under the rules of the legislative body and therefore any former rule should be examined to assure its present

compatibility with other Council procedures.

A substantial change has been made in the redistricting provisions. The foremost change is that the Common Council is required to divide the City into six (6) districts between the sixth and tenth year following the last division. No procedure is set forth for determining when the redistricting shall occur between the stated years and therefore under Home Rule the Common Council may establish its own procedure. The legislative districts must be composed of contiguous territory, be reasonably compact and contain as nearly as possible equal population.

The Common Council is required to elect a president and a president pro tempore at its first regular meeting after its election.

The Common Council has also been granted the power to declare a seat vacant if the member is unable to perform the duties of his office, in addition to its power to expel any of its own members. The revised statute I.C. 36-4-6-6 provides:

"The legislative body may:

- (1) expel any member for violation of an official duty;
- (2) declare the seat of any member vacant if he is unable to perform the duties of his office; and
- (3) adopt its own rules to govern proceedings under this section.

However, a two-thirds (2/3) vote is required to expel a member or vacate his seat."

The Common Council should establish procedural rules to govern its proceedings under this section.

VIII

Repealed Statutes With Expiration of Authority on September 1, 1982

Several statutory provisions granting certain powers to the City of Fort Wayne were repealed on September 1, 1981, and were not recodified into Title 36 of the Indiana Code. However, the repealer provided that the City could continue to operate under the repealed statute until September 1, 1982. After this date the statutory authorization for exercise of the power under the repealed statute will no longer exist and therefore it will be necessary to adopt an ordinance if it wishes to exercise the power. If the Common Council does not act prior to September 1, 1982, and it wishes to continue the exercise of its power, a gap may exist between the deadline date and the date a new ordinance is adopted. An ordinance would only be required where there is not a present ordinance which would cover the subject matter and the City is relying solely on the existing statutory basis for its power.

I.C. 18-5-4 - Franchising the use of areas above and below public right-of-ways - procedure and publication requirements.

I.C. 18-5-7 - Civic, educational, or government associations

for betterment and improvement of municipal or school operations - appropriation of funds.

- I.C. 19-7-46-3 and 4 - This statute, Sections 3 and 4, provided the authority to make annual payments to art associations and the procedure the association must follow. Although not specifically replaced, the exercise of power is not prohibited. I.C. 36-10-2-4 provides that the Common Council may aid historical facilities and programs. An ordinance may therefore be established as a procedure under I.C. 36-10-2-4 or a separate ordinance may be established for historical societies.
- I.C. 19-5-6 - This provision granted authority for second class cities to own, operate, maintain, and finance a public transportation system. Although not specifically codified in Title 36 authority granted in 19-5-6 exists under Article 9 of Title 36.
- I.C. 19-7-33 - Extended authority to tax and regulate the use of bath houses and swimming pools.
- I.C. 18-5-20 - This chapter governs the power and procedure of the Board of Public works to regulate construction of underground and overhead structures. Although this provision was not codified in I.C. 36, the power to grant a right-of-way exists under I.C. 36-9-2-6 and procedural and qualification requirements may be established by ordinance.
- I.C. 18-6-21-1 - Sets forth the procedure for appropriation and payment of a reward for the apprehension of criminals. No similar provision is contained in I.C. 36 and therefore if any authority to offer and pay a reward is desired an ordinance should be adopted.
- I.C. 19-9-0.5 - The authority to appropriate funds for not-for-profit corporations created or operated for the purpose of coordinating or supplementing public or private agencies devoted exclusively to the welfare of youth has not been transferred. The power to appropriate and fund are within the Home Rule powers of the City.
- I.C. 18-6-12 - Authorization for appropriations for promotion by City officials of the best interest of the City has

not been transferred. Specific authorization by ordinance may be established as set forth above.

- I.C. 19-7-21 - Acquisition of and operation of stadiums. Specific authorization by ordinance may be established as set forth above.
- I.C. 18-5-4 - Authorization and procedure for franchising the use of areas above, below and along public rights-of-way. Statutory provisions covering, in part, the subject matter of this section are contained in I.C. 36-9-6-13.
- I.C. 18-5-7 - Authorization for appropriation of funds for membership of the City and the community schools in associations for the purpose of benefiting their operations.

IX

Certain Repealed Statutes with Expiration of Authority on September 1, 1983

The following is a list of those statutes which are repealed; however, authority has been granted to operate under the repealed statutes until September 1, 1983:

- I.C. 19-2-11 - Sewers and drains: this section which previously conferred upon the City of Fort Wayne the power to construct and regulate sewers and drains will be repealed September 1, 1983. Chapter 24 of the Code of the City of Fort Wayne, Indiana, provides for the rules procedures and regulations of the sewers and sewage system of Fort Wayne.
- I.C. 36-9-25 - Provides an optional provision for regulation of the Sanitation Department. In order to exercise the statutory provisions, the legislature must adopt the chapter by ordinance. Otherwise, the provisions contained in Chapter 24 of the Code will control the sewers and sewage systems of Fort Wayne when it is incorporated by reference into the ordinance set forth above.
- I.C. 19-3-29 - Benefits for utility employees leaving

military service - this provision providing for continuation of records of utility employees while they are serving in the military service is not comparably replaced nor included in the City Code, therefore, in the event that the City wishes to confer upon persons in the military service these benefits, an ordinance will need to be enacted.

X

City Organization

The powers of the City are divided between the executive and legislative branches of its government. A power belonging to one branch may not be exercised by the other branch. The general powers of the executive are set forth in I.C. 36-4-5-3. The legislative powers are set forth in I.C. 36-4-4-4 and I.C. 36-4-6 et seq. In the absence of a statutory assignment of power which is an administration function the power to assign rests with the executive. If any dispute arises as to whether a power is executive or legislative, a petition may be filed for a determination in the Superior Court, in which case the Court will hear the matter en banc.

The executive is required, pursuant to I.C. 36-4-9-6, to appoint:

- (1) a City Controller (Fiscal Officer);
- (2) a City Civil Engineer;
- (3) a Corporation Counsel;
- (4) a Chief of the Fire Department;

- (5) a Chief of the Police Department;
- (6) other officers, employees, boards and commissions as required by statute.

The executive may establish the following departments:

- (1) department of finance or administration;
- (2) department of law;
- (3) department of public works;
- (4) department of public safety;
- (5) department of parks and recreation;
- (6) department of human resources and economic development;
- (7) any other department considered necessary.

These departments shall perform the administrative functions assigned by statute and ordinance. These departments, once established, may only be terminated or powers transferred upon recommendation of the Mayor and the passage of the ordinance by the Common Council.

The Common Council by ordinance, may establish the position of Deputy Mayor. The ordinance must set forth the powers of the Deputy, who would serve at the pleasure of the Mayor.

Board of Public Works and Safety

Although I.C. 36-4-9-4(c) provides that the establishment of a Department of Public Works and Safety is discretionary, I.C. 36-4-9-5 provides that each city must establish a Board of.

Public Works and Safety. The Common Council, by ordinance, may provide two separate boards. The Board, or in the case of two, Boards, will each have three members appointed by the executive and each Board shall have one Clerk appointed by the executive.

I.C. 36-8-3-2 provides that the Safety Board shall administer the Department of Public Safety. This provision may be construed as a requirement that the City establish a Department of Public Safety. The Safety Board has exclusive control over matters and property related to the Police Department, Fire Department, fire alarms, fire escapes, animal shelters and inspection of buildings. The Safety Board may further adopt rules for the government and discipline of the Police and Fire Departments, and adopt general and special orders to the Police and Fire Departments through the Chiefs of the Departments.

Two members of the Board constitute a quorum and the members may act only as a Board. The Safety Board shall appoint the members of the Police and Fire Departments other than upper-level, policy-making positions, a market master and officials necessary for the Department of Public Safety.

The Common Council must fix the compensation of Police or Fire Department by ordinance no later than August 2 of each year for the ensuing budget or the Board of Safety may fix the compensation, subject to subsequent change by ordinance.

The Safety Board is further granted the power to establish the number of members of the Police and Fire Departments. The Safety Board is also responsible for discipline, demotion, and dismissal of Fire and Police Officers for reasons stated in I.C. 36-8-3-4, unless a Merit Board is established pursuant to statute.

Transportation and Public Works

The powers granted to the Board of Public Works under I.C. 36 are expansive as were the powers granted under I.C. 18-1-6-15. Generally, unless otherwise provided by statute, the Works Board shall supervise the streets, alleys, municipal parking facilities, sewers, public grounds, municipal lights, levees and watercourses, flood control works, and other property of the City and shall keep them in good repair and condition. The Department of Public Works may also, by contract or otherwise, remove all rubbish from the City. The powers extended by statute are not mandatory and therefore powers and procedures should be established by ordinance.

A city may, by ordinance, establish a Department of Traffic Engineering. Once established, I.C. 36-9-7 establishes minimum hiring requirements for the City Traffic Engineer. The Engineer will be appointed by the Mayor and Section 3 of the chapter sets forth the specific duties of the Engineer.

The use of parking meters is authorized by statute under I.C. 36-9-12 and varies only slightly from the present City Code provisions Section 17-95 through Section 17-101. The Common Council under Section 7 of Chapter 12 may, by ordinance, require deposit of any balance in the parking fund to the general fund.

Sanitation

Regulation of the sewers and drains has been transferred to the City pursuant to I.C. 36-1-3.5-4. I.C. 36-9-25 sets forth an alternate provision for the construction, maintenance and management of sanitary sewer systems. The provisions of this chapter must be adopted by ordinance. The existing ordinance should be studied to determine whether it is satisfactory in its present form. If amendment is advisable, the Council should examine the provisions of Chapter 25. I.C. 36-1-26 provides for the establishment of a sinking fund to finance construction and maintenance of sanitary sewage and storm sewers.

Recreation, Culture and Community Facilities

A Department of Parks and Recreation may be established by ordinance pursuant to I.C. 36-10-3. If the ordinance is adopted, any separate parks and recreations departments must be repealed in the enacting ordinance.

The Board consists of four members plus the number of ex officio members established by the existing ordinance. The creating ordinance may provide for one or two ex officio members being a member of the governing body of the school corporation, selected by that body and/or a member of the governing body of the library district selected by that body. The Mayor shall appoint the Board.

The Board is charged with the following duties:

- (1) exercise general supervision of and make rules for the department;
- (2) establish rules governing the use of the park and recreation facilities by the public;
- (3) provide police protection for its property and activities, either by requesting assistance from state, municipal, or county police authorities, or by having specified employees deputized as police officers; the deputized employees, however, are not eligible for police pension benefits or other emoluments of police officers;
- (4) appoint the necessary administrative officers of the department and fix their duties;
- (5) establish standards and qualifications for the appointment of all personnel and approve their appointments without regard to politics;
- (6) make recommendations and an annual report to the executive and fiscal body of the unit concerning the operation of the board and the status of park and recreation programs in the district;
- (7) prepare and submit an annual budget in the same manner as other executive departments of the unit; and
- (8) appoint a member of the board to serve on another kind of

board or commission, whenever a statute allows a park or recreation board to do this.

If a Superintendent of Parks and Recreation is appointed, the appointment must be made under I.C. 36-4-9-2 by the Mayor, however the Mayor's appointment is subject to approval of the Board. The incumbent performing in a supervisory capacity of parks and recreation functions is eligible for appointment; however, the person must qualify by degree or education. The Superintendent of the Board shall:

- (1) propose annually a plan for the operation of the department;
- (2) administer the plan as approved by the board;
- (3) supervise the general administration of the department;
- (4) keep the records of the department and preserve all papers and documents of the department;
- (5) recommend persons for appointment as assistants if the board determines there is a need;
- (6) appoint the employees of the department, subject to the approval of the board, according to the standards and qualifications fixed by the board and without regard to political affiliation;
- (7) prepare and present to the board an annual report; and
- (8) perform other duties that the board directs.

The statute establishes a special taxing district and provides further for a cumulative building fund and issuance of bonds.

The Board may petition the Common Council to adopt by

ordinance I.C. 36-10-4, the petition submitted must be signed by all members of the Board. This chapter establishes a Department of Public Parks and is an executive department of the City. A Department of Public Parks will consist of four members, two from each political party, and appointed by the Mayor. Additional duties are not specified; however, the statute confers additional powers upon the Park Board which were not granted by the prior chapter. Any petition by the Park Board to create a parks department should be carefully reviewed and the full effect of creating a Department of Public Parks should be fully researched.

Planning and Development

The Home Rule statutes covering planning and development is a comprehensive body of statutes which regulate metropolitan, advisory, and area plan commissions. The stated purpose of the article is to encourage units to improve the health, safety, convenience, and welfare of their citizens and to plan for the future development of their communities.

The preamble language suggests that this article may be a model plan, however other provisions of this article suggest clearly that many provisions of this article are mandatory.

A full discussion of this article is beyond the scope of this report. Any ordinance introduced to Council should be

researched item by item with this article to insure compliance.

A Plan Commission created by ordinance requires nine members as follows:

- (1) one (1) member appointed by the city legislative body from its membership;
- (2) one (1) member appointed by the park board from its membership;
- (3) one (1) member or designated representative appointed by the city works board;
- (4) the resident city civil engineer;
- (5) five (5) citizen members, of whom no more than three (3) may be of the same political party, appointed by the city executive.

The Advisory Plan Commission, after development and adoption of a comprehensive plan, is required to submit recommendations for a proposed zoning ordinance to the Council for review, amendment and passage.

As part of the zoning ordinance the legislative body is required to create a Board of Zoning Appeals consisting of five members, at least two of which must be members of the City Plan Commission.

Unsafe buildings and unsafe premises statute I.C. 36-7-9 may be adopted by ordinance or any other requirements or procedure may be included in the ordinance. The present building code should be examined to determine whether amendment or re-enactment

under Title 36 should be considered.

Chapter 18 of Article 7 establishes the power to create a Housing Authority. The Housing Authority is established through the Fiscal Officer and the Mayor, no Council action is required.

Chapter 12 of Article 7 grants authority to the Fiscal Officer and the Mayor the power to create an Economic Development Commission. The Commission is created to finance economic development or pollution control facilities. There are three members authorized for appointment with one member each being selected by the Mayor, the City fiscal body, and the County fiscal body. A special tax levy is authorized to pay the costs of operation of the Commission.

XI

Purchasing Agents

The Code of the City of Fort Wayne 11-2(b) provides:

"(b) Approval or ratification required. Whenever the civil City of Fort Wayne, including any city-owned or -operated utility, makes any purchase exceeding seven thousand five hundred dollars (\$7,500.00) or enters into any lease or leases which exceed five thousand dollars (\$5,000.00) per year or when the total annual rental payments to a person under all leases exceeds five thousand dollars (\$5,000.00) including those which are subject to the bidding process as provided by Indiana Code 5-17-1, all such purchases and/or leases shall be entered into with the prior approval or subsequent ratification by the common council of the City of Fort Wayne by ordinance duly passed by said common council and approved by the mayor of the City of Fort Wayne, Indiana. All such contracts or agreements entered into without such prior approval or subsequent ratification shall be null and void."

I.C. 36-1-9-6 has established that the purchase limit is \$15,000.00 and the lease limit is \$10,000.00, for the purchases or leases without a formal bid procedure pursuant to I.C. 36-0-1-3. The statute provides the agent with proceeding under an invitation and receipt of quotes or purchase in the open market without inviting or receiving quotes.

The issue regarding this section which is mandatory is whether the limits may be reduced by ordinance.

There are legal and policy arguments as to whether the statute creates a power in the purchasing agent which requires a specific manner of exercising the power. On the other hand the more persuasive argument is that the limitation of spending authority is a limitation of power and not an extension.

This approach is further supported by the stated purposes of the statute to allow government units to establish procedures to suit their local needs. The size of the community would significantly affect the legislature's concern for expenditures. Based on the above, the Common Council would have the apparent authority to incorporate their present Section 11-2 of the Code into the Home Rule legislation.

XII

Merit System Provisions

The statute I.C. 36-8-3.5 combines the merit system for

the two departments and represents the exclusive statutory manner for the City to exercise the power of establishing a merit system.

Fire Merit

The City did not previously have a fire merit system under Indiana Code and therefore, by the provisions of Chapter 3.5, a merit system may only be established pursuant to this statute which will be further discussed below.

Police Merit

The former police merit system under I.C. 19-1-20 may be retained by ordinance of the City legislative body only if the ordinance is passed before January 1, 1983. The ordinance must incorporate all provisions of the prior statute and may not be amended or repealed by the legislative body before January 1, 1985. If the legislative body decides to repeal the ordinance after December 31, 1984, the legislative body must establish a new merit system under Section 3 of Chapter 3.5. If the Common Council fails to retain the police merit system under I.C. 19-1-20, it is required to pass an ordinance before July 1, 1983, establishing a new merit system under Section 3 of Chapter 3.5. If the new merit system is thereafter approved it takes effect as provided; however, if the merit system is rejected under Section 4 of this chapter, the legislative body shall within

thirty (30) days adopt an ordinance to retain the prior merit system.

The merit system, passed by ordinance, must be submitted to the active members of the Police Department for a vote. If the majority of the active members vote to approve the merit system, the merit system will take effect on January 1, following the vote, with appointments of the merit commission on March 1, following the effective date of the merit system. If the majority of the active members of the Department vote to reject the merit system, another proposal may not be put to vote within one (1) year after the day the meeting is held.

If the Common Council fails to pass an ordinance establishing a merit system, a majority of the active members of the Department, by referendum, may request the Common Council to establish a merit system. If the request is granted, the Common Council shall establish a merit system under this chapter. If the request is denied, it may not be submitted to the Common Council for a period of one (1) year.

A Merit Commission consisting of five (5) commissioners shall be established for each department of a unit having a merit system. The Mayor will appoint two(2) persons who must be from different political parties. The Common Council will appoint one (1) person and two (2) persons from different

political parties must be elected by active members of the respective department. After selection, the Commission must, within thirty (30) days, establish rules which will govern the Commission. Within ninety (90) days after the Commission is selected, the Commission must adopt rules governing the selection and appointment of persons to be employed as members of the department, promotions and demotions of members of the department, and disciplinary action or dismissal of members of the department.

The Commission does not have the power to appoint or remove members of the upper-level policy-making position, although they do have such powers as to other members of the department. The Commission must establish rules governing promotions, which will include basing a promotion upon the score received on a written, competitive exam; the score received, based upon an oral, competitive interview; the performance record of the member; and the member's length of service. These rules are limited by statute. Promotions of eligible members of the departments shall be based upon the rules governing prerequisites for promotions. The Commission will certify the three (3) members with the highest scores for a rank when a position becomes available.

The Commission may suspend, with or without pay, demote, or dismiss members following disciplinary actions. A decision

of the Commission may be appealed. Although the Commission is vested with the power to discipline, the Chief of the department may, with or without a hearing, reprimand or suspend, without pay, a member of the department for a maximum of five (5) working days. The decision of the Chief may be reviewed by the disciplinary Commission. A change in provisions from the former statute is that a member of the Police Department is not required to retire from the Department until he reaches his sixty-fifth (65) birthday rather than his sixtieth (60).

The prior statute under I.C. 19-1-20, although similar in many respects, contains differences regarding Commission membership, the method for rating members, review of evaluation reports with members, and other than the stated change in retirement age, the Commission under I.C. 36 will be permitted to discipline members under the merit plans.

The primary difference between the two plans appears, from reviewing the statutes, to be that the Commission is granted the power to discipline members of the various police departments within guidelines set forth in the statute. The Common Council will now be permitted to appoint one (1) member on the Commission rather than the Commission either electing a fifth person or the Mayor appointing a fifth person in the event that the four appointed members could not reach a unanimous vote.

Many other provisions may have additional effect and prior to the 1st day of July, 1983, a committee should study the various benefits and disadvantages of the two proposed merit ordinances.

Summary

The policy of the State is that in all cases where a general law can be made applicable, all laws should be general and of uniform operation throughout the State. This general policy must be considered whenever a question arises as to whether there is a statutory or constitutional provision requiring a specific manner for exercising a power. If the provision for exercising is considered to be a requirement, the basic statutory provisions must be followed. Where there is no provision requiring compliance the Council may exercise their Home Rule power so long as the power exercised is necessary or desirable.

Many provisions of Title 36 arguably may be construed in either manner, an example being the statute specifying creation of the Department of Parks and Recreation.

When a question arises it is recommended that the policy of the State be considered carefully. The policy of establishing definite provisions in order to create uniform laws will foster the development of laws which are clear and supported by judicial interpretation or are amended by the General Assembly in order to achieve greater clarity.

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